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equitable plea. The validity of such a promise was denied in *Foakes* v. *Beer;* and it is one of the ironies of fate that the House of Lords unwittingly overruled the real opinion of Coke in *Bagge* v. *Slade* almost solely because they were not prepared to overrule his supposed opinion in *Pinnel's Case.*

Bagge v. *Slade* is also interesting on account of the point actually decided. The plaintiff and defendant were liable as co-sureties to A. In consideration that the plaintiff would pay A the entire debt, the defendant promised the plaintiff to reimburse him as to a moiety. The plaintiff paid the whole amount, but the defendant declined to keep his promise. To understand this case it must be remembered that the doctrine of contribution between co-sureties was not yet established, the Court of Common Pleas saying, when granting a prohibition against a bill for contribution in the Court of Requests in 1613, "If one surety should have contribution against the other, it would be a great cause of suit." It was necessary, therefore, to prove a valid express contract for reimbursement. The court in *Bagge* v. *Slade* sustained the contract, thus setting an early precedent for the modern cases. *Shadwell* v. *Shadwell,* 30 L. J. C. P. 145; *Scotson* v. *Pegg,* 6 H. & N. 295, and *Chichester* v. *Cobb,* 14 L. T. Rep. 433.

We have, therefore, this curious result of the English decisions. If a creditor promises a debtor something in consideration of the debtor's payment of his debt, the promise is not enforceable, because the debtor's performance of his legal duty is no consideration, not being a legal detriment. If, however, a third person promises the debtor something in consideration of the debtor's payment of his debt, the promise is valid, because the debtor's performance of his legal duty is a consideration, although not a legal detriment. It is a satisfaction to know that Lord Coke is in no way responsible for this antinomy. But it is unfortunate that *Bagge* v. *Slade* was not called to the attention of the House of Lords in the case of *Foakes* v. *Beer;* for in view of the declared reluctance of all the judges in that case to pronounce the creditor's promise invalid, it is possible, if not probable, that a knowledge of Lord Coke's real opinion might have led them to an opposite conclusion. JAMES BARR AMES.

"TRUSTS" WITHOUT BENEFICIARIES. — An erroneous decision in a court of law, unlike mistakes made in most professions or trades, never is at rest. The mischief is done not once and for all, but spreads like a contagious disease, affecting new matter and influencing the decision of other cases far removed in time and place from its origin. Especially is this true when such a decision is made by a judge whose opinions are entitled to the greatest respect. When Lord Eldon in the case of *Morice* v. *The Bishop of Durham,* 10 Ves. 521, held that a gift on trust for benevolent purposes was void because there was no *cestui* to enforce the trust, he could hardly have imagined what was to be the far-reaching and lamentable effect of the decision, and the tax it was to put on the ingenuity of judges and lawyers to prevent the extension of its principle. That case is securely established as law both in England and America; too securely, perhaps, to be done away with except by legislative aid. But its *ratio decidendi* has been discredited by the decisions of courts of both countries in cases differing in no wise from it in principle. Gifts on trust for example, for the purpose of erecting a tombstone, for maintain-

ing stables and kennels, and for the benefit of negro slaves, have been held valid. Ames Cases on Trusts, 201–204. The simple principle, believed to be legally sound, on which these later cases may be supported, is as follows. The donee takes subject to a moral obligation to carry out the testator's commands. There is no *cestui*, to be sure, and therefore properly speaking there is no trust; but if the donee is willing to act honestly, equity will not prevent him. If, however, he refuses to perform his moral duty and determines to enrich himself, the heirs or next of kin may properly ask a court of equity to declare the donee constructive trustee for them. There is a contingent constructive trust; and the beneficiaries under it, the heirs or next of kin, are presumably always ready to step forward and demand its enforcement in the contingency of the donee's not fulfilling his duty. (See an article on "The Failure of the 'Tilden Trust,'" 5 HARVARD LAW REVIEW, 389.) That the result secured by this reasoning is to be desired can hardly be questioned. Some courts have reached it by taking arbitrary distinctions, and in certain States statutes have been passed securing it.

A step in the other direction is the case of *McHugh* v. *McCole*, 78 N. W. Rep. 631 (Wis.). There the court refused to limit Lord Eldon's decision arbitrarily, and extended its principle to the case before them. They held a bequest on trust to pay for masses for the testator's soul void because there was no *cestui* to enforce it. Directly opposed to this case are *Reichenbach* v. *Quin*, 21 L. R. Ir. 138, and several American cases. *Shouler, Pet.*, 134 Mass. 426; *Seibert's App.*, 18 W. N. Cas. 276 (Pa.). The Wisconsin court acted logically if not wisely. They followed to its legitimate result a generally accepted decision, and *Morice* v. *The Bishop of Durham*, acting from a long distance, and through an interval of nearly a hundred years, accomplished a fresh injustice.

SCIENTIFIC BOOKS AS EVIDENCE. — In the case of *Western Assurance Co.* v. *J. H. Mohlman Co.*, U. S. Circ. Court of App., Second Circ., Oct. 11, 1897 (not yet reported), the Court held admissible, in support of a professional opinion, statements as to strength of timber contained in scientific books of admitted authority. This is believed to be an entirely novel point, and the ruling made ought to attract considerable notice. Judge Lacombe, in delivering the opinion of the Court, puts the reason for admitting these statements in an admirable form. "Under the rule contended for [excluding these statements] this valuable information would be available for the use of a Court of Justice so long as the men who made the tests and prepared the tabulations were living and producible, but after their death or disappearance the information they had gathered would be lost to the Court, although available for every one else in the community. . . . We feel, therefore, no hesitancy in so modifying the general rule as to hold that where the scientific work containing them is concededly recognized as a standard authority by the profession, statistics of mechanical experiments and tabulations of the results thereof may be read in evidence by an expert witness in support of his professional opinion, when such statistics and tabulations are generally relied upon by experts in the particular field of the mechanic arts with which they are concerned."

This is a step rather in the face of many *dicta* to the contrary. Although no court has ever excluded such statements in books of this